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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JENNIFER R., a Person Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARIA E. et al.,

Defendants and Appellants.

D049100

(Super. Ct. No. SJ11613D)

APPEAL from orders of the Superior Court of San Diego County, Susan D.  
Huguenor, Judge. Affirmed in part; dismissed in part.

Maria E. and Severiano R. appeal orders declaring their minor daughter  
Jennifer R. a dependent of the juvenile court under Welfare and Institutions Code<sup>1</sup>

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

section 300, subdivision (b) and removing Jennifer from their custody under section 361, subdivision (c)(1). Maria and Severiano challenge the sufficiency of the evidence to support the court's jurisdictional finding that Jennifer suffered or was at risk of suffering serious physical harm. They further challenge the sufficiency of the evidence to support the court's dispositional order removing Jennifer from parental custody. We conclude substantial evidence supports the court's jurisdictional order. As to the court's dispositional order, we conclude the issue is moot because Jennifer has been returned to Maria's custody.

#### FACTUAL AND PROCEDURAL BACKGROUND

In March 2006, four-year-old Jennifer was taken into protective custody after Drug Enforcement Agency (DEA) agents executed a search warrant at her home where she lived with Maria and four of Jennifer's siblings. The home had been under video surveillance by the DEA since December 2005 as part of an ongoing investigation into drug smuggling and sales. Although the agents found no drugs during the search, they found a fully loaded handgun in a shoe under the bed of Jennifer's 16-year-old brother, Gilberto R. The bed was in a common area in which the children played. The agents also found 10 cellular telephones and several empty speaker boxes, which they believed were used to facilitate drug transactions. Maria denied there were any drugs in her home or that drug trafficking occurred there. Immigration officials arrested Maria and deported

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her to Mexico because her green card had expired. She illegally returned to San Diego the next month.

Severiano had been arrested several months earlier for attempting to bring drugs into the United States from Mexico. Six pounds of methamphetamine were found in his car. Jennifer's siblings, Gilberto, 17-year-old Joel R. and 10-year-old Dulce R. were with their father when he was arrested. Later that day, federal agents intercepted a telephone call between one of Jennifer's adult siblings and the alleged kingpin of the drug conspiracy, asking whether the family home had been "cleaned up." Severiano was charged with conspiracy to distribute methamphetamine and was facing a prison sentence of four to six years.

At the time of the search, San Diego County Health and Human Services Agency (Agency) social worker Erik Sanchez interviewed the children. Jennifer denied seeing a lot of people come to the house. Dulce said "sometimes" a lot of people came to the house to buy speaker boxes. She denied seeing or knowing about any drugs in the home. Jennifer's 14-year-old sister Claudia R. believed the police came to the house looking for her brothers Joel and Gilberto because they were "runners." Claudia explained her adult brother Olegario would give Joel and Gilberto packets of a white substance, which she knew was "crystal," to deliver to various people. Claudia told Sanchez she had been involved in running drugs, although she did not want to do so.<sup>2</sup> Claudia did not know if there were drugs in the home. Joel was on house arrest for transporting drugs across the

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<sup>2</sup> Claudia later denied making this statement.

border. He and Gilberto denied knowing why the police had come to their house or whether any drugs were there.

Agency filed a petition in the juvenile court on behalf of Jennifer, alleging a gun was found under the bed of her 16-year-old brother, and the gun was accessible to her. (§ 300, subd. (b).) The petition further alleged Jennifer's parents were incarcerated and unable to arrange appropriate care for her. (§ 300, subd. (g).)<sup>3</sup> The court detained Jennifer at Polinsky Children's Center.

According to a report prepared for the jurisdiction and disposition hearings, Claudia and Dulce had run away from their foster home and their whereabouts were unknown. Joel was detained in juvenile hall and Gilberto, who was awaiting a probation hearing on theft charges, ran away from Polinsky Children's Center. Attached to the report was a copy of the federal indictment describing Severiano's involvement in the criminal conspiracy. The indictment also detailed the involvement of one of Maria and Severiano's adult sons and two unnamed minors, presumably Joel and Gilberto.

Social worker Lidia Briano reported that a DEA agent was concerned for Jennifer's safety due to the nature of the investigation and the breadth of the criminal enterprise. The agent said Jennifer would be in danger if placed with relatives because family members involved in the case remained at large. Retaliation was common among

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<sup>3</sup> Petitions were also filed on behalf of Gilberto, Claudia and Dulce, who are not subjects of this appeal.

drug dealers when one of them was arrested and owed money to other drug dealers. The agent recommended placing Jennifer in a confidential foster home.

Briano was concerned that Severiano and Olegario were using the younger children as pawns in their drug dealing business. Maria said she was upset with Severiano and wanted nothing to do with him. She claimed she did not know her husband or sons were involved in illegal activity, and Severiano did not own the car he was driving at the time he was arrested for drug smuggling. Maria said no one in the home used drugs.

Maria had a prior felony conviction for possessing marijuana for sale and was placed on probation for three years, conditioned on serving 180 days in jail. She was visiting Jennifer regularly and participating in parenting classes and individual therapy. Claudia and Dulce were with relatives in Mexico. Gilberto was in custody and facing felony charges.

At a contested jurisdiction and disposition hearing, the court dismissed the allegation under section 300, subdivision (g) because Maria was no longer incarcerated. Maria testified no visitors came to her home other than the children's friends and the paternal uncle. She denied knowing any of the co-conspirators in the federal indictment. Maria testified she was unaware the older siblings had used Claudia to transport drugs. She knew Severiano's gun was in the house, but said it was kept under her mattress. She did not know how Gilberto obtained the gun.

Maria testified she did not allow drugs in her home. She admitted she had a prior drug conviction, but claimed the drugs were not hers. Maria did not plan to reunite with Severiano.

Briano testified she was concerned about the safety of the children because a loaded gun was found within reach of four-year-old Jennifer, and Maria claimed to be unaware it was accessible to the children. Further, Maria continued to deny knowing her sons were dealing drugs and had used Claudia to transport them. She accused the social worker of lying about Claudia's statement regarding transporting drugs for her brothers. In Briano's opinion, Maria's denial prevented her from adequately protecting Jennifer.

After considering the evidence and hearing argument of counsel, the court sustained the allegations of the petition by clear and convincing evidence, declared Jennifer a dependent, removed her from parental custody, and placed her in licensed foster care. The court ordered Maria and Severiano to comply with their case plans, including having supervised visits with Jennifer.

## DISCUSSION

### I

Maria and Severiano challenge the sufficiency of the evidence to support the court's jurisdictional finding Jennifer had suffered, or was at risk of suffering, serious physical harm because a gun was found under Gilberto's bed. They assert Agency presented no evidence Jennifer knew about or had access to the gun, and she was no longer subjected to a defined risk of harm at the time of the jurisdiction hearing.

## A

In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Baby Boy L.* (1994) 24 Cal. App.4th 596, 610.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child or provide adequate medical treatment. In enacting section 300, the Legislature intended to protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of *children who are at risk of that harm.*" (§ 300.2, italics added.) The court need not wait until a child is seriously injured to assume jurisdiction and take the steps necessary to protect the child. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194-196; *In re Michael S.* (1981) 127 Cal.App.3d 348, 357-358.)

## B

Here, the evidence showed a loaded handgun was found under 16-year-old Gilberto's bed, in an area where the children played. Even if the gun was out of Jennifer's sight, it was not out of her reach. There was a risk to Jennifer's physical health and safety because Maria knew there was a gun in the home, but failed to prevent the gun from being moved somewhere accessible to her children, showing a gross lack of attention to their welfare. (See *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1651.)

Jennifer was also at risk of substantial harm because drug trafficking was occurring in her home. Despite Maria's refusal to acknowledge her family's involvement, the evidence showed DEA agents had been monitoring the home with video surveillance because of suspected drug activity. Severiano was arrested, with three of his children in the car, for transporting methamphetamine across the international border. Joel and Gilberto were also implicated in smuggling methamphetamine into the United States from Mexico. When the family home was searched, agents found 10 cellular telephones and empty speaker boxes, which the agents believed were used to facilitate drug transactions. Dulce said people came to the house to buy speaker boxes. Claudia knew Joel and Gilberto were involved in transporting drugs for another brother, and she reluctantly transported drugs for them.

Although Maria claimed no one in her home used drugs and she would not allow drug trafficking to occur there, the court expressly disbelieved her. We cannot reweigh the evidence or substitute our judgment for that of the trial court. (*In re Casey D.*, *supra*, 70 Cal.App.4th at pp. 52-53.) Maria's failure to recognize the risk she posed to Jennifer



by denying any responsibility for exposing her to a loaded gun and illegal drug activity supported a finding Jennifer was at risk of suffering serious physical harm as a result of her parents' failure to protect her. Substantial evidence supports the court's jurisdictional finding.

## II

At the request of Maria's counsel, we take judicial notice of the juvenile court's minute order of January 31, 2007, placing Jennifer with Maria. Although Maria acknowledges the dispositional order removing Jennifer from her custody no longer exists and thus the issue is moot, she asks us to exercise our discretion to review the propriety of the order. We decline to do so.

An appellate court will not review questions which are moot and only of academic importance, nor will it determine abstract questions of law at the request of a party who shows no substantial rights can be affected by the decision either way. (*Keefer v. Keefer* (1939) 31 Cal.App.2d 335, 337; *Save Tara v. City of West Hollywood* (2007) 147 Cal.App.4th 1091, 1114.) The duty of an appellate court is to decide actual controversies and not to give opinions on moot questions or abstract propositions, or to declare principles of law that cannot affect the matter at issue in the case before it. (*In re Audrey D.* (1979) 100 Cal.App.3d 34, 39, fn. 4.)

Further, an appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.) We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make

a case moot and whether our decision would affect the outcome in a subsequent proceeding. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404-405; *In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.)

Here, no effective relief can be afforded Maria or Severiano as to the dispositional order because the juvenile court has returned Jennifer to Maria's custody after determining Jennifer is now safe with her. Because the issue presented will not affect the outcome of this case in a subsequent proceeding and is not of broad public interest likely to recur, we decline to exercise our inherent discretion to resolve it. (*In re Andres G.* (1998) 64 Cal.App.4th 476, 483-484; cf. *In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158-1159; *In re William M.* (1970) 3 Cal.3d 16, 19, 23 [delinquency court's refusal to consider specific facts supporting release of juvenile before jurisdictional hearing was issue of broad public concern likely to recur]; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [jurisdictional orders will continue to adversely affect appellant].)

## DISPOSITION

The jurisdictional order is affirmed. The appeal from the dispositional order is dismissed as moot.

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HALLER, Acting P.J.

WE CONCUR:

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O'ROURKE, J.

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IRION, J.